

Appeal from the decision of the California State Office, Bureau of Land Management, declaring portions of mining claim CA MC 106307 to be null and void ab initio.

Affirmed.

1. Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Powersite Lands

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a preexisting power project to be null and void ab initio.

2. Mining Claims: Withdrawn Land

The Bureau of Land Management properly declares null and void ab initio the portion of a placer mining claim located on land previously withdrawn and segregated from appropriation under the mining laws pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. §§ 1411-1418 (1976)).

3. Mining Claims: Placer Claims

Under 30 U.S.C. § 36 (1976), an association placer location must embrace contiguous tracts of land. Lands which merely corner each other are not contiguous under this provision.

APPEARANCES: W. G. Singleton, pro se.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

W. G. Singleton, a co-locator of the God's Detour Association placer mining claim, CA MC 106307, has appealed from the June 17, 1982, decision of the California State Office, Bureau of Land Management (BLM), declaring two portions of that mining claim to be null and void ab initio. 1/ The claim was located on January 15, 1982, and was duly recorded with BLM pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976).

BLM based its decision on two separate determinations: (1) that a northern portion of the mining claim is located within the boundaries of the Merced Irrigation District's Project No. 2179 and is, therefore, on land closed to mineral location under a provision of section 2 of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976); and (2) that the portion of the claim located in the SW 1/4 SW 1/4 of sec. 21 is on land classified for multiple-use management and segregated from appropriation under the mining laws by the notice of classification (S-487) published on August 30, 1967. See 32 FR 12565-67. In his statement of reasons, appellant asserted his intention and ability to develop his claim without interference with other land uses in the vicinity of the claim, but did not challenge BLM's determinations of the status of land covered by the mining claim.

[1] Section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. § 818 (1976), provides, in pertinent part, that: "Any lands of the United States included in any proposed project under the provisions of [Subchapter 1 of the Federal Power Act] shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the [Federal Energy Regulatory] Commission or by Congress." Under the terms of section 2(a) of the Mining Claim Rights Restoration Act, 30 U.S.C. § 621(a) (1976), Congress reopened lands withdrawn or reserved for power development to entry for location and patent of mining claims, subject to various provisos. The first of these provisos is that the legislation does not open "any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act." The Merced Irrigation District's Project No. 2179 is such a project; therefore, Federal lands within the project are not open to the location of mining claims. The record reveals that a portion of the SW 1/4 NW 1/4 of sec. 21 is within the boundaries of this project. 2/ Thus, BLM correctly determined that this land is closed to entry for mineral location and that the portion of appellant's mining claim located on this land was null and void ab initio.

[2] The other portion of appellant's mining claim declared to be null and void by BLM is that portion embracing the SW 1/4 SW 1/4 of sec. 21. As is noted above, BLM determined that this quarter-quarter section of land was

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1/ The location of the mining claim is: SW 1/4 NW 1/4, W 1/2 SW 1/4, SE 1/4 SW 1/4 sec. 21, T. 3 S., R. 16 E., Mount Diablo meridian (Mariposa County).

2/ See Federal Energy Regulatory Commission (FERC) map No. 2179-111.

segregated from appropriation under the mining laws by the notice of classification (S-487) published by BLM on August 30, 1967. Appellant has not alleged that this parcel has been restored to entry.

[3] We wish to comment on one aspect of this case not mentioned in the decision below. As originally located, the claim embraced the SW 1/4 NW 1/4, NW 1/4 SW 1/4 and the S 1/2 SW 1/4 of sec. 21, T. 3 S., R. 16 E., Mount Diablo meridian, aggregating 160 acres, as is permitted by sec. 12 of the 1870 Placer Act, 30 U.S.C. § 36 (1976). That Act provides, in relevant part, that "two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than 10 acres each, may make joint entry thereof." (Emphasis supplied.) The land claimed, therefore, must be contiguous. See Stenfield v. Espe, 171 F. 825 (9th Cir. 1909). As originally located on the ground, the areas claimed were contiguous. As noted above, however, the SW 1/4 SW 1/4 was not open to entry at the time of location. Thus, the SE 1/4 SW 1/4 only corners on the rest of the location. Two separate tracts which merely corner cannot be entered in a single location. See Tomera Placer Claim, 33 L.D. 560 (1905). Thus, claimants must elect which tracts they wish to preserve under their claim. Id. at 561. Assuming that the land is still available, the relinquished portion would, of course, be available for the location of a separate claim by claimants.

For the foregoing reasons, and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

